ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review	)	
	)	
Amendment of Parts 43 and 63 of the Commission's Rules	)	IB Docket No. 00-231
	)	

To: The Commission

COMMENTS OF CINGULAR WIRELESS LLC

Cingular Wireless LLC ("Cingular"), by its attorneys, hereby submits comments in response to the *Notice of Proposed Rulemaking* in the above-referenced proceeding.[1] Cingular supports the few proposed rule changes that have direct implications for commercial mobile radio service ("CMRS") providers who primarily resell the switch-based international services of unaffiliated facilities-based carriers. Cingular nevertheless urges the Commission to use the opportunity provided in the 2000 Biennial Regulatory Review process to further reduce the Part 63 application filing and Part 43 reporting burdens imposed on CMRS carriers who resell international service on a nondominant basis.

I. THE COMMISSION SHOULD CONFORM INTERNATIONAL SECTION 214 APPLICATION PROCEDURES WITH EXISTING CMRS RULES

Cingular, like most CMRS carriers, offers its customers international services primarily through the resale of unaffiliated facilities-based carriers' switched services. Many of the Commission's proposed rule changes thus will have little direct relevance to most CMRS carriers.

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[1] *2000 Biennial Regulatory Review - Amendment of Parts 43 and 63 of the Commission's Rules, Notice of Proposed Rulemaking*, IB Docket No. 00-231, FCC 00-407 (rel. Nov. 30, 2000) ("*NPRM*").

Cingular generally supports the few rule changes that would affect CMRS providers, and encourages the Commission to take further action to exempt CMRS providers entirely from the service discontinuance requirements of Section 63.19.

Pro Forma Transactions/Multiplier. The Commission proposes to generally revise the post-consummation notification procedures for *pro forma* transfers of control of international Section 214 authorizations to more closely reflect the existing procedures for applications involving CMRS licenses.[2] While the Commission's proposed rule change will actually *increase* carriers' Part 63 filing requirements by requiring notification for *pro forma* transfers of control, in Cingular's experience such Part 63 filings for *pro forma* assignments have not proven overly burdensome. Cingular also agrees with the Commission that the additional flexibility provided under the CMRS rules in determining when transactions are *pro forma* in nature is appropriate in the Part 63 context as well. Finally, Cingular supports the Commission's proposal to amend the Part 63 rule description of the "multiplier" used for purposes of calculating noncontrolling indirect ownership to more closely reflect the rules for CMRS licensees.[3]

Service Discontinuance Requirements. The Commission proposes that carriers regulated as dominant solely by virtue of their foreign carrier affiliations be subject to the less onerous service discontinuance notification requirements of Section 63.19 of the rules.[4] As CMRS

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[2] *Id.* ¶¶ 7-20.

[3] *Id.* ¶ 30.

[4] *Id.* ¶¶ 26-29. It is Cingular's understanding that the International Bureau expects that where CMRS provider (Company A) assigns its Title III licenses to another entity (Company B) that already holds sufficient international Section 214 authority, Company A must either comply with Section 63.19 or file a complete transfer/assignment application under Section 63.18(e)(3) rather than simply relinquish its authorization. Given that Company B would either need to obtain international Section 214 authorization in its own right or, if it is acquiring foreign carrier affiliations, file a Section 63.11 notification, prohibiting Company A from relinquishing its

(continued...)

providers' international services already are uniformly regulated as nondominant, this proposed rule change will not have a meaningful impact on them. Indeed, the rationale for the rule stated in the *NPRM*, "that consumers will not have adequate alternatives available if a dominant carrier discontinues service," underscores the fact that Section 63.19 is *unnecessary* for CMRS providers.[5] The Commission has already determined that *any* Section 214 discontinuance requirements are unnecessary for CMRS providers' interstate services.[6] Given the competitiveness of the CMRS marketplace and that international services are largely ancillary to CMRS providers' principal business,[7] this rationale is equally applicable to CMRS providers' international services and "is no longer necessary in the public interest as the result of meaningful economic competition."[8] Indeed, given that CMRS subscribers use their handsets almost exclusively for intrastate and interstate service -- which are subject to *no* service discontinuance notification requirements -- subjecting CMRS providers to these requirements for their international services effectively renders the service discontinuance provisions of the *CMRS Forbearance Order* meaningless. The

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[4] (...continued)
authorization serves no purpose and merely subjects the parties to additional filing and fee burdens. *See infra* Section II.A for related discussion.

[5] *See id.* ¶ 28.

[6] *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, Second Report and Order*, 9 F.C.C.R. 1411, ¶ 182 (1994) ("*CMRS Forbearance Order*"). In that decision, the Commission determined "that the time involved in the decertification process can impose additional losses on a carrier after competitive circumstances have made a particular service uneconomic and, if adequate substitute services are abundantly available, the discontinuance application is unnecessary to protect consumers." *Id.*

[7] Cingular submits that a review of CMRS carriers' FCC Form 499 filings would reveal that their international revenues are minuscule in comparison to their CMRS revenues.

[8] *See* 47 U.S.C. § 161(a)(2).

Commission should thus conform the Part 63 and CMRS rules by eliminating CMRS providers' Section 63.19 discontinuance obligations.

II. THE COMMISSION SHOULD EXPAND SECTION 63.21 TO INCLUDE CERTAIN NON-WHOLLY-OWNED SUBSIDIARIES AND ELIMINATE THE SECTION 43.61 REPORTING REQUIREMENTS

Consistent with Congress' intent that the Commission "review *all* regulations issued under this Act in effect at the time of the review," Cingular urges the Commission to take the opportunity provided in the 2000 Biennial Regulatory Review to address additional issues involving certain Part 43 and Part 63 rules.[9] The rules at issue are (1) Section 63.21(i), which limits the scope of an international Section 214 authorization to a carrier and its "wholly owned direct or indirect subsidiaries;"[10] and (2) Section 43.61, which requires international common carriers, including CMRS providers, to report traffic and revenue data.[11]

A. The Commission Should Authorize Certain Non-Wholly-Owned Subsidiaries and Partnerships to Provide Service Via Their Parent's Authorization

Section 63.21(i) of the Commission's rules provides that "an authorized carrier may provide service through any *wholly owned* direct or indirect subsidiaries."[12] At the time it adopted the rule, the Commission rejected the suggestion that partnerships in which a carrier has a controlling interest be able to operate pursuant to the controlling carrier's authorization, reasoning that "a controlling interest that does not amount to 100 percent ownership may raise additional issues, such as additional foreign affiliations or minority ownership or beneficial interest by

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9 *See id.* § 161(a) (emphasis added).

10 47 C.F.R. § 63.21(i).

11 *Id.* § 43.61.

12 *Id.* § 63.21(i) (emphasis added).

persons or entities who are barred from holding a Commission authorization."[13] The Commission's rule thus requires even a limited partnership in which an authorized carrier holds a 99 percent and sole general partnership interest and a limited partner holds just a 1 percent equity interest to obtain a separate authorization -- even though the latter minority interest is not even reportable under the Commission's Part 63 application rules.[14]

As a related matter, the Commission has also advised carriers that they may not file single, joint applications -- either initial applications or transfer of control/assignment applications -- on behalf of all of their commonly-controlled affiliates, even if all ownership information and foreign carrier affiliations are listed for each affiliate. This application of the rule is particularly burdensome for CMRS carriers, which often operate through a large number of commonly-controlled and operationally integrated -- but non-wholly-owned -- partnerships and subsidiaries.[15] The Commission should instead allow an entity and all of the subsidiaries in which it holds a sole controlling ownership interest to operate pursuant to the same authorization and simply require than any subsidiary entity's foreign carrier affiliations be disclosed.

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[13] *1998 Biennial Regulatory Review — Review of International Common Carrier Regulations, Report and Order*, 14 F.C.C.R. 4909, ¶ 56 (1999). As AirTouch Communications, Inc. and BellSouth Corporation discussed, adoption of Section 63.21(i) did *not* rescind authorizations previously obtained by carriers on behalf of their non-wholly-owned subsidiaries and partnerships. AirTouch Communications, Inc. and BellSouth Corporation, Petition for Clarification and Reconsideration, IB Docket No. 98-118, filed May 19, 1999.

[14] Only interests of 10 percent or greater are reported in an application for a initial Section 214 authorization, and only noncontrolling ownership interests of greater than 25 percent will result in a foreign carrier affiliation. Thus, a wholly-owned subsidiary of the authorized carrier in this hypothetical would report, in an application for initial authorization, the exact same ownership information as the limited partnership.

[15] Due to the early cellular licensing process, many partial, passive ownership interests in cellular licensees were created as a result of settlement agreements. Many of the resulting limited partnerships remain the licensees in their markets. *See Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order*, 8 F.C.C.R. 7700, 7745 (1993); *Algreg Cellular Engineering*, 12 F.C.C.R. 8148, ¶¶ 25-29 (1997).

The recent application of this rule to transactions involving CMRS carriers underscores the undue burdens associated with the Commission's approach. The International Bureau has advised carriers that, for purposes of Section 63.21(i), a wholly-owned CMRS licensee subsidiary of an authorized carrier provides services via "derivative authority." When a CMRS carrier enters into a transaction to assign or transfer control of a wholly-owned subsidiary's Title III license to another entity, the parties to the transaction have been advised that they must also apply to assign or transfer control of the so-called derivative authority pursuant to Section 63.18(e)(3) of the rules -- even where the acquiring company already possesses international Section 214 authority in its own right. A similar scenario arises when a licensee partitions or disaggregates its spectrum and assigns it directly to an unaffiliated entity. In either case, a pure "spectrum play" is involved, regardless of whether the assignee entity will provide service to the assignor's former customers.[16] This application of the rule presumes: (1) that the wholly-owned subsidiary is actually providing international service; and/or (2) that the assignee/transferee will provide such service when, in fact, it may have no such intention[17] or the transaction involves a "spectrum play." The transferee or assignee is thus essentially forced to obtain an additional Commission authorization it may neither need nor desire.

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[16] Cingular understands that the International Bureau has drawn a distinction between spectrum transactions in which the assignor retains all of its customers, versus transactions in which the assignee acquires customers as well as spectrum. Cingular submits that this represents a distinction without a difference. An international Section 214 authorization, unlike a PCS or cellular license, is not tied to customers in a particular geographic area or using a particular spectrum band. Also, a CMRS provider does not acquire foreign carrier affiliations or new ownership merely by acquiring another's customers in a particular geographic market. Finally, as noted *supra* in Section I.A, there is no legitimate concern for the public interest implications of international service discontinuance to the assignor's subscribers. Thus, a transfer of CMRS customers, in itself, raises no anticompetitive issues for Part 63 purposes.

[17] Cingular understands that a number of CMRS carriers either block international calls or allow customers a choice of long distance carriers, rather than resell the international service in their own right.

The Commission's rule unnecessarily requires CMRS carriers to file multiple and virtually identical Part 63 applications, both in the context of initial applications under Sections 63.18(e)(1) and (e)(2), and transfer of control/assignment applications under Section 63.18(e)(3). In large transactions, this results in duplicative filings with substantial filing fees -- $815.00 per application. The Commission should therefore amend its rules to: (1) allow a carrier and all of the subsidiaries in which it holds a sole controlling interest to provide international service pursuant to a single authorization and transfer or assign existing commonly-controlled authorizations in a single application; and (2) clarify that a CMRS carrier's international Section 214 authority need not be assigned when a transferee/assignee already has sufficient international Section 214 authority or only a "spectrum play" is involved. At absolute minimum, the Commission should dramatically alter its application fee structure in these circumstances.

Authorizing CMRS carriers to streamline their Part 63 filings in the manner proposed herein is consistent with the Commission's stated objectives of "enabl[ing] the Commission to screen applications for anticompetitive efforts" and "monitor[ing] competitive conditions along U.S. international routes as well as each carrier's compliance with our rules and policies."[18] Any concerns that the potential impact of a transaction on the U.S. international marketplace will evade Commission scrutiny are addressed by other Part 63 rules. A transferee/assignee would, in all cases, need to obtain an initial Section 214 authorization prior to commencing service, and authorized carriers have ongoing obligations to notify the Commission if a transaction results in a

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[18] *See Federal Communications Commission, Biennial Regulatory Review 2000 Updated Staff Report*, at 109 (rel. Jan. 17, 2001).

new foreign carrier affiliation.[19] These existing rules ensure that carriers do not commence international service without prior Commission approval.

B. The Commission Should Eliminate Section 43.61 Requirements for CMRS Providers

In response to the Biennial Review staff report, Cingular and Verizon Wireless both proposed eliminating the Section 43.61 international traffic and revenue data reporting requirement for CMRS carriers. As Verizon Wireless explained in its comments, "[p]reparing and filing the Section 43.61 report entails a significant administrative burden involving substantial man-hours," particularly for nationwide CMRS carriers.[20] No comment is sought on Cingular's and Verizon Wireless' proposals in the *NPRM*, and the Commission did not propose any significant changes to the Part 43 rules on its own. This requirement "is no longer necessary in the public interest as the result of meaningful economic competition between" CMRS and between international service providers. The Commission should therefore further reduce regulatory burdens by eliminating this requirement for CMRS providers.

International services are ancillary to CMRS carriers' primary service offering. CMRS carriers' competitive efforts -- *e.g.*, marketing, investment, deployment -- are targeted at their core wireless services. As competitive carriers, they have no ability to somehow leverage their CMRS service in the international marketplace. Moreover, as most CMRS carriers resell the services of

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[19] *See* Public Notice, *Implementation of Revised Rules Governing Foreign Carrier Affiliations*, IB Docket No. 97-142, DA 00-2491, at 2 (rel. Nov. 7, 2000) (separate filings required when transaction involves both transfer of control/assignment and foreign carrier affiliation).

[20] *See* Verizon Wireless Staff Report Comments at 4.

unaffiliated facilities-based carriers, they have no direct relation with the carrier on the foreign end and have no ability to distort traffic or revenue flows on individual routes.[21]

Importantly, any individual CMRS carrier's share of the international telecommunications marketplace is minuscule, as a review of the Commission's calendar year 1999 data confirms.[22] Moreover, most CMRS carriers' international services are reported as "pure resale," reflecting the fact that virtually all CMRS carriers resell the services of unaffiliated facilities-based carriers.[23] The Commission's determination "that the resale of an unaffiliated U.S. facilities-based carrier's switched services 'presents no substantial possibility of anticompetitive effects in the U.S. international service market'" is therefore particularly relevant to the CMRS context.[24] To the extent that the scope of CMRS carriers' international services expands dramatically, such a development would be reflected in their Form 499 filings, and the Commission could revisit CMRS carriers' Section 43.61 filing obligations at that time.[25] Cingular agrees with Verizon Wireless' comments in response to the Staff Report that, at minimum, the Commission should limit the Section 43.61 filing requirements to CMRS providers offering facilities-based international services.[26]

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[21] *See GTE Telecom Incorporated*, 13 F.C.C.R. 4378, ¶ 27 (1998) (citing *Regulation of International Common Carrier Services, Report and Order*, 7 F.C.C.R. 7331, 7335 (1992)); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order and Order on Reconsideration*, 12 F.C.C.R. 23891, ¶¶ 193-214 (1997).

[22] Federal Communications Commission, Common Carrier Bureau, Industry Analysis Div., *1999 International Telecommunications Data* (Dec. 2000).

[23] *Id.*

[24] *GTE Telecom*, 13 F.C.C.R. 4378 ¶ 27.

[25] *See* Verizon Wireless Staff Report Comments at 5.

[26] *See id.* at 5-6.

Finally, CMRS carriers may, by virtue of the foreign carrier affiliations attributed to them via their parent companies, be subjected to the *quarterly* Section 43.61(c) reporting requirements for particular routes. This requirement may apply even when reselling the services of unaffiliated facilities-based carriers. These reports are particularly burdensome to carriers because of (1) the frequency of the filings, (2) the difficulty and cost of compiling the aggregate information of multiple commonly-controlled CMRS affiliates, and (3) the minuscule amount of traffic and revenue reported on a quarterly basis. Given CMRS carriers' limited share of the international services marketplace, and that the foreign carrier affiliations at issue typically result from the ownership interests of a parent entity, the Commission should at minimum exempt CMRS carriers from quarterly Section 43.61(c) requirements.

CONCLUSION

For the foregoing reasons, Cingular supports the few proposed rules directly applicable to pure resellers, and urges the Commission to use the opportunity provided in the 2000 Biennial Regulatory Review process to further reduce CMRS providers' Part 63 and Part 43 filing burdens.

Respectfully submitted,

CINGULAR WIRELESS LLC

By: 

Joaquin R. Carbonell
Carol L. Tacker
5565 Glenridge Connector
Atlanta, GA 30342
(404) 236-6030

Its Attorneys.

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